

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: SEQUOIA GROUP, INC, IT'S OFFICERS  
DIRECTORS, EMPLOYEES, AFFILIATES, SUCCESSORS, AGENTS  
AND ASSIGNS, and MICHAEL T. KIMMELMAN, INDIVIDUALLY

File No's: 1000376 &  
1000404

THIRD AMENDED NOTICE OF HEARING

TO THE RESPONDENTS:

Sequoia Group, Inc.  
c/o Michael T. Kimmelman, Registered Agent  
578 Barberry Rd.  
Highland Park, Illinois 60035-4455

Mr. Michael T. Kimmelman  
Sequoia Group, Inc.  
578 Barberry Rd.  
Highland Park, Illinois

You are hereby notified that pursuant to Section 10-55 of The Illinois Business Brokers Act of 1955, 815 ILCS 307/10-1, et seq. (the "Act") and 14 Ill. Adm. Code 130, Subpart K, a public hearing will be held at 69 West Washington Street, Suite 1220, Chicago, Illinois 60602, on the 13<sup>th</sup> day of July, 2011, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard, before James L. Kopecky, or another duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether a permanent Order of Suspension or Revocation should be entered against the Sequoia Group, Inc., and its directors, officers agents, employees, sales representatives, and affiliates, and Michael T. Kimmelman, individually (collectively "Respondents"), and/or granting such other relief as may be authorized under the Act including, but not limited to, the imposition of a monetary fine in the maximum amount of \$10,000 per violation, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

1. Respondent Sequoia Group, Inc., ("Sequoia") an Illinois corporation is an Illinois Corporation and maintains its business address at 578 Barberry Road, Highland Park, Illinois 60035-4455.
2. Respondent Michael T. Kimmelman, ("Kimmelman", collectively with "Sequoia" "Respondents") an individual who maintains his address at 578 Barberry Road, Highland Park, Illinois 60035-4455.
3. That from on or about April 2006 Respondents individually and by and through their Officers, Directors, Employees, Affiliates, Successors, Agents and Assigns (the

Third Amended Notice of Hearing

-2-

"Respondents"), offered and held themselves out as providing businesses for sale and services to potential business buyers for a fee to more than one Illinois resident.

4. That from on or about April, 2006, to the present, Sequoia was registered with the Secretary of State of Illinois as a Business Broker, and Kimmelman listed as its' Registered Representative.
5. That the Respondents are business brokers as that term is defined pursuant to Section 10-5.10. of the Illinois Business Brokers Act of 1995 [815 ILCS 307/10-1 et seq.] (the "Act");
6. That Respondents acted as the escrow agent for earnest money deposits paid by Purchasers pursuant to The Sequoia Group, Inc.'s Offer's to purchase a business.
7. That subsequent to January 1, 2008, several Illinois Residents, including Purchaser A and Purchaser B ("Purchasers"), became clients of Respondents, and Purchasers A and B paid to Respondents, as escrow agents, sums aggregating Fifty Thousand (\$50,000.00) Dollars for earnest money deposits; which sums were not returned to those Purchasers when the sales pursuant to their Offers to Purchase were not completed without fault on the part of those Purchasers.

**Purchaser A**

8. That Purchaser on December 10, 2008 Purchaser A gave to Respondents a check payable to Respondent Sequoia as earnest money to be escrowed in the amount of Ten Thousand (\$10,000.00) Dollars, which was deposited into Respondent Sequoia's bank account number XXXXX1129.
9. That checks, electronic payments, ATM transactions, other debits and transfers in various amounts were made from Sequoia's bank account number XXXXX1129 between December 10, 2008 and December 31, 2008 including checks made by Ann Kimmelman, a former Director of Respondent Sequoia payable to Respondent Kimmelman totaling One Thousand Two Hundred Fifty (\$1,250.00) Dollars, and a check payable to cash in the amount of Three Thousand One Hundred Seventy-Two (\$3,172.00) Dollars which was cashed by Respondent Kimmelman.
10. That on November 29, 2008, Respondent Sequoia's bank account number XXXXX1129 had a beginning balance of Seven Hundred Fifty-Eight and 83/100 (\$758.83) Dollars and on December 31, 2008, Respondent Sequoia's bank account number XXXXX1129 had an ending balance of less than Seven Hundred (\$700.00) Dollars.
11. That Purchaser A's Ten Thousand (\$10,000.00) Dollars earnest money deposit was in its entirety converted by Respondents for personal purposes during the month of December, 2008.
12. That in February of 2009 Purchaser A demanded from Respondents the return of his Ten Thousand (\$10,000.00) Dollars earnest money deposit.

Third Amended Notice of Hearing

-3-

13. That in or about December 2009 filed suit in the Circuit Court of the Nineteenth Judicial Circuit Lake County, Illinois, Gen N. 09 SC 8888 against Seller and Respondent Sequoia as escrow agent, for the return of his earnest money deposit.
14. That on March 4, 2010 a Settlement Agreement and Release was entered into by the parties and the Circuit Court action was dismissed on March 4, 2010 subject to the Settlement Agreement. The Agreement provided that payment was to be made by Seller and Respondent Sequoia to Purchaser A in two equal installments by May 9, 2010.
15. On June 22, 2010 in that no payment was received by Purchaser A by the May 9, 2010 deadline, the Court Ordered that Judgment be entered against Seller and Respondent Sequoia jointly and severally in the amount of Ten Thousand (\$10,000.00) Dollars plus costs and attorneys fees.
16. That purchaser A has still not received the return of his escrowed funds.

**Purchaser B**

17. That Purchaser B issued two checks to Respondents payable to Respondent Sequoia as earnest money to be escrowed in the amounts of Thirty Thousand (\$30,000.00) Dollars on March 5, 2010 and Ten Thousand (\$10,000.00) Dollars on June 21, 2010. That Purchaser B's checks were deposited in Respondent Sequoia's bank account number XXXXX1322.
18. That on March 31, 2010, Respondent Sequoia's bank account number XXXXX1322 had an ending balance of less than Four Thousand (\$4,000.00) Dollars taking into account Purchaser B's \$30,000.00 March 5, 2010 earnest money deposit and all other deposits and withdrawals to or from that account during the month of March, 2010.
19. That on June 30, 2010, Respondent Sequoia's bank account number XXXXX1322 had an ending balance of less than Fifty (\$50.00) Dollars taking into account Purchaser B's \$10,000.00 June 22, 2010 earnest money deposit and all other deposits and withdrawals to or from that account during the month of June, 2010.
20. That in August of 2010 Purchaser B demanded from Respondents the return of his escrowed Forty Thousand (\$40,000.00) Dollars earnest money deposit.
21. That on November 3, 2010, Respondents issued a check from Respondent Sequoia's account number XXXXX1322 payable to Purchaser B in the amount of Forty Thousand (\$40,000.00) Dollars, which Purchaser B deposited and on November 12, 2010, was returned by Purchaser B's bank to Purchaser B for the reason: "return reason-A not sufficient funds"
22. That purchaser B has still not received the return of his earnest money.

**Willful Contempt of Suspension Order**

### Third Amended Notice of Hearing

-4-

23. That at all times relevant hereto, Sequoia was registered with the Secretary of State of Illinois as a Business Broker, and Kimmelman listed as its' Registered Representative prior to the aforementioned activities in the State of Illinois, and that on December 2, 2010 the Respondents were SUSPENDED by the Secretary of State of Illinois from engaging in the business of business brokering in the State of Illinois until further order of the Secretary of State.
24. That section 10-5.10. of the Act provides in part: "'Business Broker' means any person who is required to register under Section 10-10 of this Act and...(4) advertises or represents himself as a business broker..."
25. That subsequent to service on Respondents of the December 2, 2010 Order and continuing to on or about May 18, 2011 Respondents Kimmelman and Sequoia were listed on the <http://www.bizbuysell.com> in alliance with The Wall Street Journal Online as Lake County Business Brokers. That the area served by Respondents was listed as Lake County, Illinois at the phone number 847-579-0212.
26. That by virtue of the foregoing, the Respondents have violated Section 10-85(b)(1) of the Act by acting as a Business Broker without registration during the period of their suspension.
27. That Section 10-65 of the Act provides: Any person who willfully violates this Act commits a class 4 felony.
28. That by virtue of the foregoing, the Respondent has violated Section 10-65 of the Act.

#### Violations

29. That Section Sec. 10-85.(a)(1)(2) and (3) of the Act: Fraudulent and prohibited acts, provides, inter alia, that:
  - (a) A business broker shall not, in connection with a contract for the services of a business broker, either directly or indirectly, do any of the following:
    - (1) Employ and device, scheme or artifice to defraud.
    - (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading, unless the statement is made in reasonable reliance on information provided by the client.
    - (3) Engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person.
30. That by virtue of the foregoing conversion of the Purchasers' escrowed earnest money funds for purposes which it was not intended, the Respondents have violated Sections 10-85.(a)(1)(2) and (3) of the Act.

Third Amended Notice of Hearing

-5-

31. That Respondent's actions in paragraphs 9, 10, 11, 18, 19 and 21 are willful violations of the Act.
32. That section 140.200 Procedures for Renewal of Registration as a Business Broker under Section 10-20 of the Act in part provides:
  - a) If a registered business broker wishes to renew its registration, it shall file with the Securities Department the preprinted Illinois Form BB04 together with the renewal filing and examination fee and branch office fee, if any, as specified in Section 140.2110 of this Part.
  - b) Any amendment(s) shall also be filed with the Securities Department within ten business days if any material change occurs in the information that was filed with the Securities Department when the business broker applied for registration.
33. That paragraphs 2) and 3) of the Application for renewal as Business Broker provide:
  - 2) If any information on the written disclosure document has changed, please provide the Department with a copy of the changed pages.
  - 3) If the disciplinary history reported on your initial filing has changed, please provide the Department with the change and an explanation on a separate page.
34. That Section 10-85(b)(2). of the Act: Fraudulent and prohibited acts [in part, provides]:
  - (b) A business broker shall not either directly or indirectly do the following:...
  - (2) Fail to file with the Secretary of State any application, report, document, or answer required to be filed under the provisions of this Act or any rule made by the Secretary of State pursuant to this Act or fail to comply with the terms of any order issued pursuant to this Act or rule or made by the Secretary of State.
35. That on June 22, 2010, In the Circuit Court of Nineteenth Judicial Circuit, Lake County, Illinois a judgment in Gen No. 09 SC 8884, was entered against Respondent Sequoia and others in the amount of Ten Thousand Dollars (\$10, 000.00) dollars plus costs and attorneys fees of (\$250.00) for breach of a settlement agreement dated March 4, 2010.
36. That said judgment was not reported on any changed disclosure statement nor any change in disciplinary history reported to Respondents initial finding, and provided to the Department subsequent to the Judgment.
37. That by virtue of the foregoing, the Respondents have violated Sections 10-85(b)(2) of the Act;

**Revocation**

Third Amended Notice of Hearing

-6-

38. That Section 10-40.(a) of the Act provides, inter alia, that the Secretary of State, after finding that any provision of the Act has been violated, may revoke the registration of the business broker.
39. That Section 10-55.(a) of the Act provides, inter alia, that in addition to any other sanction or remedy the Secretary of State, after finding that any provision of the Act has been violated, may impose an administrative fine upon the person in an amount not to exceed \$10,000 for each violation.

You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 Ill. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above within ten (10) days of the receipt of this Amended Notice. A failure to file an answer within the prescribed time shall be construed as an admission of the allegations contained in the Notice of Hearing.

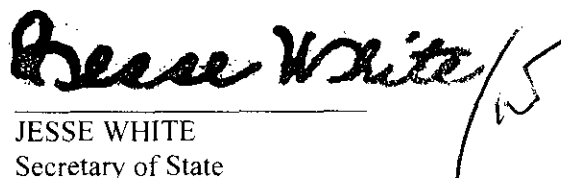
You are also notified that That Section 10-65. of the Act provides: Any person who willfully violates this Act commits a class 4 felony.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute a default, unless any Respondents has upon due notice moved for and obtained a continuance.

Below is a link of a copy of the Rules, promulgated under the Act and pertaining to hearings held by the Office of the Secretary of State, Securities Department, is included with this Notice.  
<http://www.cyberdriveillinois.com/departments/securities/lawrules.html>

Delivery of notice to the designated representative of any Respondents constitutes service upon such Respondents.

Dated: This 20<sup>th</sup> day of May, 2011.

  
\_\_\_\_\_  
JESSE WHITE  
Secretary of State  
State of Illinois

Attorney for the Secretary of State:  
Samuel F. Freiman  
Illinois Securities Department  
69 West Washington Street, Suite 1220  
Chicago, Illinois 60602  
312-793-3988

Hearing Officer:  
James L. Kopecky  
203 North LaSalle Street, Suite 1620  
Chicago, Illinois 60601  
312-380-6552